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No. 75-1436

In the Supreme Court of the United States

OCTOBER TERM, 1975

THE OIL SHALE CORPORATION, ET AL., PETITIONERS

v.

THOMAS S. KLEPPE, SECRETARY OF THE INTERIOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The order of remand of the court of appeals (Pet. App. 1a-7a) is unreported. The opinion of the district court is reported at 370 F. Supp. 108.

JURISDICTION

The judgment of the court of appeals was entered on September 22, 1975. A timely petition for rehearing or rehearing *en banc* was denied on February 11, 1976. The petition for a writ of certiorari was filed on April 9, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the court of appeals violated this Court's mandate in *Hickel* v. *Oil Shale Corp.*, 400 U.S. 48, by directing the district court and the Secretary of the In-

terior to resolve all issues concerning the validity of certain oil shale claims prior to further appellate review.

2. Whether the court of appeals' remand of this case to the district court and the Secretary of the Interior, in an effort to expedite the ultimate resolution of the litigation, was an abuse of discretion that warrants the exercise of this Court's supervisory powers.

STATEMENT

1. In 1920, Congress passed Section 21 of the Mineral Lands Leasing Act, 41 Stat. 445, 30 U.S.C. 241(a), which "completely changed the national policy over the disposition of oil shale lands." *Hickel* v. *Oil Shale Corp.*, 400 U.S. 48, 51. The Act prohibited the location of new oil shale claims and provided that lands containing oil shale and other fossil fuels could only be leased and could no longer pass into private ownership based on claims filed and reduced to patent. The Act contained a Savings Clause, however, which provided that claims that had been located prior to enactment of the Mineral Lands Leasing Act could be reduced to patent if "thereafter maintained in compliance with the laws under which initiated" (Section 37, 30 U.S.C. 193).

Among the laws governing the issuance of patents were Sections 5 and 6 of the Mining Act of 1872, 17 Stat. 91, 30 U.S.C. 28 and 29, which provided that until a patent issued "not less than $100 worth of labor shall be performed or improvements made during the year" and that no patent could issue unless the claimaint had expended $500 worth of labor or improvements on the claim. In the 1920's and 1930's the Department of the Interior contested a large number of oil shale claims for failure to perform the required assessment work during certain years, and declared invalid more than 20,000 locations, covering more than 2,750,000 acres of public lands, because of non-compliance with 30 U.S.C. 28.

2. Petitioners instituted these actions in 1964 to determine the status of certain oil shale claims on public lands in Garfield and Rio Blanco Counties, Colorado, that the Secretary had declared invalid thirty years earlier for failure to perform assessment work. Three of these cases were brought to review a decision of the Secretary rejecting patent applications on the ground that the claims had been declared invalid in previous contest proceedings. *Union Oil Company of California, et al.*, 71 I.D. 169. The fourth action sought to enjoin the Secretary from enforcing his rulings canceling the claims.

The district court held the assessment work contests to be null and void, concluding that the Secretary had lacked jurisdiction to cancel oil shale claims because of failure to perform assessment work. *Oil Shale Corporation* v. *Udall*, 261 F. Supp. 954 (D. Colo.). The court construed this Court's decisions in *Wilbur* v. *Krushnic*, 280 U.S. 306, and *Ickes* v. *Virginia-Colorado Development Corp.*, 295 U.S. 639, as holding that "[f]ailure to perform assessment work on a claim located prior to the [Mineral Lands Leasing Act] * * * only renders it subject to loss by relocation [by rival claimants] and is *without effect* so far as the Government is concerned." 261 F. Supp. at 961. The court of appeals affirmed on the same grounds. *Udall* v. *Oil Shale Corporation*, 406 F. 2d 759 (C.A. 10).

This Court reversed and remanded. *Hickel* v. *Oil Shale Corp.*, *supra*. The Court ruled that although the Mineral Lands Leasing Act of 1920 had withdrawn oil shale lands from further location under the mining laws, the withdrawal did not release persons holding existing claims from their statutory obligation to perform annual assessment work. Furthermore, since the 1920 Act precluded rival claimants from basing a relocation upon an assessment work failure, the Court held that the "Act makes the United States the beneficiary of all claims invalid

for lack of assessment work or otherwise. It follows that the Department of the Interior had, and has, subject matter jurisdiction over contests involving the performance of assessment work." 400 U.S. at 57. The Court limited its hoidings in *Krushnic* and *Virginia-Colorado* "to situations where there [has] been substantial compliance with the assessment work requirements of the 1872 Act * * *," 400 U.S. at 57, and therefore concluded that the Secretary could invalidate oil shale claims on which the assessment work did not amount to substantial compliance.

Although petitioners had asserted in *Hickel* that the 1930 contest proceedings were void for reasons apart from the Secretary's alleged lack of jurisdiction, the Court declined to reach those other issues, which had not been decided by the lower courts. Instead, it remanded for further proceedings, stating (400 U.S. at 58):

> These contentions present questions not decided below. Therefore, on remand all issues relevant to the current validity of those contest proceedings will be open, including the availability of judicial review at this time. To the extent that they are found void, not controlling, or subject to review, all issues relevant to the invalidity of the claims will be open, including inadequate assessment work, abandonment, fraud, and the like. Likewise all issues concerning the time, amount, and nature of the assessment work will be open so that the claimants will have an opportunity to bring their claims within the narrow ambit of *Krushnic* and *Virginia-Colorado*, as we have construed and limited these opinions.

3. On remand, the district court concluded that the Secretary could not rely upon the earlier assessment work contests to deny patents for petitioners' oil shale claims. *Oil Shale Corporation* v. *Morton*, 370 F. Supp.

108 (D. Colo). First, the court held that in 1935, subsequent to the decision in *Virginia-Colorado*, the Secretary had determined that his prior rulings against oil shale mining claims based on non-performance of assessment work had been ineffective to invalidate those claims, and he had therefore vacated *en masse* all previous oil shale assessment work contests (*The Shale Oil Company*, 55 I.D. 287). 370 F. Supp. at 117-121. Second, the court conciuded that by consistently adhering to the policy announced in *Shale Oil* for thirty years and by issuing patents to other holders of previously cancelled oil shale claims, the Secretary had established a "rule" which was binding on the Department and which could not be retroactively repudiated. 370 F. Supp. at 121-124. Finally, the court held that, in the circumstances of this case, the Secretary was estopped from applying a changed policy against petitioners. 370 F. Supp. at 124-126. Having found that the old contest proceedings were no obstacle to the issuance of patents to petitioners, the court remanded the cases to the Secretary for a determination of other possible grounds for the current invalidity of the claims, such as "abandonment, fraud, lack of a valid discovery or any other critical infirmity, as the Supreme Court directed." 370 F. Supp. at 127.[1]

On appeal, the court of appeals declined to rule on the merits of the issues decided by the district court and instead remanded the cases to that court with directions to remand them to the Secretary. The court of appeals explained (Pet. App. 4a-5a):

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[1]Since the district court ruled that the Secretary could not rely upon the completed contests, it did not reach the issues of whether those contests were subject to judicial review at this time or whether they had been infected by substantive and procedural errors such as lack of notice.

Good judicial husbandry demands that litigation be brought to a conclusion within a reasonable time frame. The energy situation in which this country finds itself compels a sense of urgency be brought to this action by this Court and the litigants. As the case now stands, many issues concerning the ultimate validity of these claims remain for determination. Should this Court or the Supreme Court determine that all three substantive bases relied upon by the trial court did not prevent use of assessment work contests to bar these claims, issues concerning the effect of these very same contests would remain: whether direct judicial review of them for substantive and procedural errors is possible at this time, and whether any errors occurred. Affirmance of the decision below would not prevent the assertion of the other bases for invalidity. Consequently, the validity or invalidity of the claims will not be determined by any decision this Court or the Supreme Court could make with the case in its present posture. In the hope that a speedier end can be brought to this important litigation, and by means of this Court's, inherent power to regulate litigation in the interest of judicial economy, the following order of remand is hereby entered.

ARGUMENT

1. Petitioners contend (Pet. 10-12) that the decision of the court of appeals violates the mandate of this Court in *Hickel* v. *Shale Oil Corp.*, *supra*. See p. 4, *supra*. But the language employed by this Court in *Hickel* in remanding these cases to the district court did not direct the lower courts to pass upon the current validity of the old contest proceedings prior to resolving any of the other issues that could defeat petitioners' patents.

Rather, the Court's language clearly indicates that it was merely informing all parties that it had not passed upon any issues other than the Secretary's jurisdiction to invalidate oil shale claims for failure to perform assessment work, and that these other issues would remain open for determination on remand. Cf. *Goldberg* v. *United States*, No. 74-6293, decided March 30, 1976, slip op. 16, n. 20. Indeed, not only does the Court's opinion fail to support petitioners' strained interpretation, there is also no logical reason why the mandate in *Hickel* would have specified the precise order in which various claims, tangential to the issues that had been decided by the Court, should be resolved by the lower courts.

2. Similarly unfounded is petitioners' contention (Pet. 13-21) that the court of appeals' "unjustified refusal" to rule upon the merits of the appeal warrants the exercise of this Court's supervisory powers. Courts possess broad, inherent powers to regulate the management of litigation on their docket in the interests of justice and the conservation of judicial resources. See, *e.g.*, *Colorado River Water Conservation District* v. *United States*, No. 74-940, decided March 24, 1976, slip op. 16; *Kerotest Manufacturing Co.* v. *C-O-Two Fire Equipment Co.*, 342 U.S. 180, 183. The court of appeals did not abuse that broad discretion in this case.

While petitioners are undoubtedly correct that the interests of the public as well as of the parties would be served by a final resolution of their claims, a ruling on the merits of the present appeal by the court of appeals would not have disposed of this litigation and (considering the additional time that the court of appeals would have required in order to rule upon the merits) would not have advanced the ultimate disposition. As the court below recognized (Pet. App. 5a), further extended litiga-

tion would still have been required regardless of the court's decision.[2] If the court had affirmed the district court, the cases would have been remanded to the Secretary for a determination of the other issues bearing on the validity of petitioners' claims. If the court had reversed the district court, the cases would have been remanded to determine whether direct review of the mining contests is permissible at this time and, if so, whether there had been any procedural or substantive error in those proceedings.

Thus, the court of appeals, faced with a second piecemeal appeal taken ten years after the initiation of this litigation, concluded that the Secretary and the district court should resolve *all* of the potential issues in this case so that it and, if appropriate, this Court may finally determine, in a single appeal, the validity of petitioners' patent claims. We believe that this disposition, which will materially advance the ultimate resolution of this lawsuit, was reasonable and proper under the circumstances and does not warrant review by this Court.

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[2]Thus, this case is unlike *Southwestern Sugar & Molasses Co.* v. *River Terminals Corp.*, 360 U.S. 411, 414-415, where a ruling by the court of appeals on any one of three grounds could have effectively disposed of the entire litigation. Moreover, the court of appeals here merely delayed its ruling on the legal issues decided by the district court; it did not refuse entirely to decide them. Compare *Meredith* v. *Winter Haven*, 320 U.S. 228.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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